

IN THE MATTER OF	*	CASE NO. SPEX-23-3
SPURRY FAMIY PARTNERHSIP	*	SPECIAL EXCEPTION AND VARIANCE REQUEST APPLICATION

Applicant obtained its first Special Exception in 1988 (Appeal No. 744). The Board of Appeals granted two Special Exceptions to expand the existing non-conforming seafood market and to change a portion of the expanded structure to restaurant use. The Special Exception limited seating to 75 and hours of operation were limited from 9 am to 9 pm. Additionally,

alcohol sales were limited to beer and wine pending approval of a license from the Talbot County Liquor Board.

The property was rezoned in 1989 from C-1 to RC. Thereafter, the restaurant was a legally nonconforming use.

In 1991, (Appeal No. 842) this Board granted a modification to the Special Exception to allow Applicant to obtain Class F liquor license and allow on and off premises sale of beer and light wine, and the on-premises sale of liquor. The existing restaurant structure was re-built in 1991.

In 1992, (Appeal No. 885) this Board permitted the expansion of the Special Exception and enlargement of the legal nonconforming use. The expansion was for 1,348 sq. ft. of additional dining and food preparation areas. The Board decision limited restaurant seating to 125 seats or the number allowed by the fire marshal, whichever is less.

In 2014, (Appeal No. 14-1624) this Board granted approval to convert 600 sq. ft. of the existing office inside the restaurant structure to install a bar and waiting area. The approval increased the number of patrons by 32.

On January 27, 2005, Applicant and the Maryland Department of the Environment entered into an administrative consent order requiring installation of a holding tank and abandonment of the existing failed septic system. Under the terms of the consent order, Applicant must pump and haul wastewater from the property for off-site disposal.

On December 7, 2022, Applicant received Major Site Plan approval from the Planning Commission for the improvements under review by this Board. The Planning Commission issued a favorable recommendation for the modification to Special Exception at its April 5, 2023 meeting.

SUMMARY OF TESTIMONY

Attorney Bruce Armistead appeared on behalf of the Applicant. Joseph Spurry and Erin Spurry provided testimony on behalf of the Applicant. Mr. Armistead initially clarified that the Applicant seeks to construct a storage structure that is 32' x 44', as opposed to the 36' x 72' structure that was stated in the Application.

According to Applicant, the desire for outdoor seating is driven by changed dining habits of the public. The Applicant's restaurant business caters to local diners and those customers frequently request outdoor seating, which has become increasingly popular from what has been a necessity during the pandemic. The Applicant does not anticipate that the outdoor dining will increase the number of patrons that visit the restaurant; rather, it provides an optional, open air alternative to the customers who already dine at the restaurant.

The storage structure is needed to hold dry storage goods for both the restaurant and the wholesale seafood business that is operated on the property.

Mr. Armistead demonstrated the proposal's consistency with the County's Comprehensive Plan. The Comprehensive Plan supports tourism in the County and economic activity. The restaurant employs approximately 45-53 employees, mostly year round. The property is a unique staple in the community by providing both dining and wholesale seafood operations. Including the seafood business, the property employs up to 70 employees. Applicant has recently been awarded a community impact award in recognition of the service and economic impact it provides for the community.

The added structures (outdoor seating and storage) will not be any closer to the State Highway than existing structures but require a variance because structures cannot be placed elsewhere that would comply with the 150' setback requirement. State Highway Administration has responded to the Application with no concerns.

The Applicant does not anticipate that the Special Exception modification will result in additional wastewater on the property. Applicant is a licensed septic hauler and removes septic from holding tanks multiple times a week. Although additional wastewater usage is not anticipated, Applicants are taking steps to reduce wastewater, especially with the dish washing technology that it utilizes.

Sean Callahan, of Lane Engineering, prepared the site plan and testified regarding runoff on the property. The property is currently covered by concrete pads leftover from the property's historical use before Applicant purchased the property. Concrete, impervious surface will be removed, thereby reducing runoff on the site.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Special Exception

The Board finds by a preponderance of the evidence that the Application should be approved for modification of the Special Exception.

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan. The 2016 Comprehensive plan states that "the County should support and encourage the appropriate enhancement, redevelopment and reinvestment in existing tourism related nonconforming structure and uses so that they may contribute positively to the County's economic base." The Board finds that the Applicant is a significant contributor to the County's efforts to promote tourism.

Additionally, the Comprehensive Plan encourages supporting local businesses, improving the local tax base, and preservation of the County's maritime and agricultural heritage. The Board finds that the Applicant is a significant employer in the County and that continuation of the existing

seafood and restaurant uses are a critical market for local watermen and are thereby important for the preservation of the County's maritime and agricultural heritage to promote the County's economic development activities.

The property has operated with commercial and industrial land uses for over 100 years. Tourists and locals go out of their way to stop at the restaurant. Many restaurants have provided outdoor seating/dining to keep up with the demand for outdoor ambience and fresh air. The Chesapeake Landing Restaurant is an existing nonconforming structure and business that is operating year round and employs numerous individuals. The restaurant supports many peripheral businesses such as local agriculture as well as seafood suppliers.

The Board additionally finds, based on testimony, that the proposed outdoor seating area is an appropriate response to dining habits that have changed as a result of the pandemic. The Board finds that the outdoor dining area will not result in material increase in the number of dining patrons.

2. The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The project plan meets setback and other design criteria of the Talbot County Code or has been granted relief of the standard by the Planning Commission. Applicant received waivers for 15 parking spaces and landscaping through site plan approval.

The standards in the RC zoning district are designed to conserve land and water resources. The site is also CAO. The Board finds that the additions are designed to conserve resources by reducing impervious surface. The site contains 60.8% lot coverage and has received a certificate of nonconformity for the coverage. Lot coverage will be reduced to 58.6% or 8,578 sq. ft. with the proposed modifications and improvements to the site. The 100' tributary stream buffer will be enhanced with the plantings to meet the 15% critical area forestry requirement.

3. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses, with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property. The Board finds that the bulk and general appearance of the restaurant and fisheries uses will remain relatively the same. Proposed improvements are internal to the site and will be screened by existing fencing and/or existing structures.

The outdoor dining will be ancillary to the existing restaurant. The Board finds that the addition will not result in substantial increases in customer volume, based on testimony provided.

4. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental features. The Board does not anticipate that the added storage structure or outdoor dining will impact the neighboring properties. The property is adjacent to Maryland Highway 33, which generates significantly more noise.

The property has a private well and private septic system. The Board finds, based on testimony provided, that the outdoor dining will not contribute to any significant increase in wastewater.

5. The use will not have a significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

6. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic.

7. The use will not produce traffic volumes, which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. Public Works has reviewed the site plan and does not have any concerns about the public road capacity.

8. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area.

The site plan does not propose or anticipate any additional impacts. The Board finds that current ingress and egress, circulation, and parking will not be affected by the grant of this modification to the Special Exception.

9. The use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The project will require some tree removal, which will be mitigated.

Variance

The Board finds that the Applicant has satisfied the standards for granting a variance.

A. Unique physical characteristics exist such that literal enforcement of the setback requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property.

The property is legally nonconforming as it was developed prior to existing zoning regulations. The unique characteristics of the property would require almost any improvement to require a variance of the 150' State Highway setback. The property is less than 300' wide and is situated between Maryland State Highway 33 and a former County right of way.

B. The need for a variance is not based upon circumstances which are self-created or self-imposed. As previously stated, the property is legally nonconforming. The lot has remained in its current configuration for many years.

C. The variance is not requested for greater profitability or lack of knowledge of the restrictions. The Board finds, based on the testimony provided, that the storage structure is a necessity for continued business operations. Outdoor dining is being provided as an alternative to diners and not for the purpose of increasing the number of diners that visit the restaurant.

D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Board finds that the additions are modest to a business that has operated for decades in the area.

E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Board finds that the requests are the minimum adjustment necessary. There does not appear to be an alternate area for location of the structures and that the placements are in the most practical locations.

EXHIBITS

The Applicant submitted the following exhibits on the record during the hearing:

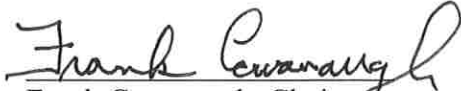
1. Critical Area email to County staff.


Mr. Krebeck moved that (1) the Applicant be granted the requested variance and (2) that the Applicant be granted a Special Exception subject to staff conditions. The motion was seconded by Mr. Adelman. Based upon the foregoing, the Board finds, by a unanimous vote that the Applicant's requests are granted subject to staff conditions.

1. The applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Site Plan and Landscaping Plan as spelled out in the Talbot County Code.

2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.

IT IS THEREFORE, this 18th day of April, 2023, **ORDERED** that the Applicant's requests for modifications to the existing Special Exception and a variance is GRANTED.


Frank Cavanaugh, Chairman


Jeff Adelman


Paul Shortall, Jr.


Zakary A. Krebeck


Patrick Forrest